

THURSDAY, MARCH 14, 2002

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

BUSINESS TAXES APPEALS HEARINGS

Joudah Eliav, 89000092450

10-1-94 to 9-30-97, \$9,673.54 Tax

\$00.00 Penalty, Negligence

For Petitioner: Alexander Rachmanony, Representative
Joudah Eliav

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether audited taxable sales are excessive.
Whether petitioner's claim that he was told that an error rate less than 10 percent would not be projected warrants relief under Revenue and Taxation Code section 6596.

Whether relief from the interest is warranted.

Whether the Board's acceptance and cashing of a payment check accompanied by a letter containing a conditional endorsement relieves petitioner of the balance of the liability.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to submit additional documentation, the Department 30 days to review the documentation, and the Appeals section 30 days thereafter, to bring the matter back to the Board with a final recommendation.

Price Pfister, Inc., 89000075580

10-1-90 to 9-30-93, \$40,814.33 Tax

For Petitioner: David Snieszko, Consultant
James Levinson, Consultant

For Sales and Use Tax Department: David H. Levine, Counsel
Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether the resale cards issued by petitioner's predecessor, Price Pfister Brass Company, were invalid for petitioner's purchases since the certificates were issued for a prior entity.

Whether the facts support a credit for self-assessed tax on tooling allegedly purchased for use out of state.

Action: Mr. Klehs moved to submit the petition. The motion failed for the lack of a second.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the petition be granted.

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Hart Facility Resources, Inc., 89000465030

7-1-94 to 6-30-99, \$114,417.07 Claim for Refund

For Petitioner: John P. Lyon, Senior Vice President

For Sales and Use Tax Department: Jeffrey H. Graybill, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether 100 percent of the "installation" charges billed under contract number 54876 represents nontaxable installation labor.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined with adjustments.

Mr. Klehs stated for the record that he would have voted with the majority in the petition of *Hart Facility Resources, Inc., 89000465030*.

Richard R. Waterfield, 83285

8-31-98, \$15,589.00 Tax

\$00.00 Penalty, Failure to File

\$00.00 Penalty, Finality

For Petitioner: Robert S. Schriebman, Attorney

For Sales and Use Tax Department: Trecia Nienow, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the purchase and first functional use of the vessel occurred outside California.

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Octaviano M. Leyva, 89002346410

2-20-95 to 12-31-97, \$46,707.42 Tax

\$4,670.76 Penalty, Negligence

For Petitioner: Ongley J. Ocon, Accountant

Octaviano Leyva

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the evidence establishes that audited purchases are overstated.

Whether an increase in self-consumption is warranted.

Whether relief from the penalty for negligence is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Lee-John Sobering, 89002235300

10-1-93 to 12-31-96, \$30,368.56 Tax

\$00.00 Penalty, Negligence

For Petitioner: No Appearance

For Sales and Use Tax Department: Warren L. Astleford, Counsel

Action: The Board took no action.

Young Boo Moon, 89000024880

1-1-92 to 6-30-94, \$182,222.94 Tax

\$45,555.80 Penalty, Fraud

For Petitioner: Michael M. Gill, Attorney

Thomas Kim

For Sales and Use Tax Department: Mark Woolston, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the measure of tax was established in accordance with the facts.

Whether relief from the fraud penalty is warranted.

Action: Mr. Andal moved to reduce the measure of tax by 25 percent. Mr. Parrish seconded the motion. No vote was taken.

Mr. Andal moved to reduce the measure of tax by 40 percent. Mr. Parrish offered a substitute motion to removed the fraud penalty. The motion was seconded by Mr. Andal but failed to carry, Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting no.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel voting no, the Board ordered that the measure of tax be reduced by 40 percent.

Luna's Radiators & Mufflers, Inc., 37843

4-1-95 to 3-31-98, \$46,306.67 Tax

\$00.00 Penalty, Negligence

For Petitioner: Isaac Luna, Vice President

David Luna

For Sales and Use Tax Department: Mark Woolston, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the evidence supports a further reduction in the amount of audited purchases.

Whether the audited markup was established in accordance with the facts.

Whether adjustments to the audit are warranted because of petitioner's inability to pay the liability.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section. The Board

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directed staff to offer petitioner a two-year payment plan. If at the end of the two years additional time is need the Board has directed staff to grant an additional two years.

Honest Jiup Chung, 87121, 53166, 110600

1-1-93 to 12-31-96, \$100,160.56 Tax

\$25,040.14 Penalty, Fraud

JDK 2000, Inc., 89002080010

1-1-93 to 12-31-98, \$93,400.00 Tax

\$31,101.48 Penalty, Fraud

For Petitioner: Charles L. Nagel, Attorney

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether taxpayer has provided evidence that he had additional sales for resale and that deposits made into his account represent something other than income from the sale at retail of jewelry.

Whether relief from the 25 percent penalty for fraud or the intent to evade the tax is warranted.

Whether relief from the finality penalty is warranted.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

FINAL ACTION ON PETITIONS HEARD MARCH 13, 2002

Mr. Parrish moved to reduce the percentage of error in the petition of *Rajinder Pal Bawa and Manjit Singh Bawa, 29082*. The motion failed for the lack of a second.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs, and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Mr. Parrish moved to reduce the percentage of error in the petition of *Manjit Singh Bawa and Rajinder Pal Singh Bawa, 29081*. The motion failed for lack of a second.

Upon motion of Ms. Mandel, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal not participating, the Board ordered that the petition of *Manjit Singh Bawa and Rajinder Pal Singh Bawa, 29081*, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Andal not participating, the Board ordered that the petition of *M.R.B. Corporation, 47804*, be redetermined as recommended by the Appeals Section.

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Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal not participating, the Board ordered that the petition of *Delano Furniture Center Inc.*, 89002238240, be redetermined with adjustments as recommended by the Appeals Section.

Mr. Klehs moved to redetermine as recommended by the Appeals Section in the petition of *TNT Motor Corporation*, 55796. The motion was seconded by Mr. Chiang. No vote was taken.

Mr. Parrish moved to delete the fraud penalty. The motion was seconded by Mr. Andal but failed to carry, Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no, Mr. Andal not participating.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal not participating, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Chiang, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal not participating, the Board ordered that the petition of *Harbor City Discount Auto Center, Inc.*, 89000180250, *Anthony Tonsich*, 89000966260, be redetermined as recommended by the Appeals Section.

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Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Richard R. Waterfield*, 83285, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Octaviano M. Leyva*, 89002346410, be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and duly carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang and Ms. Mandel voting no, the Board ordered that in the petition of *Honrest Jiup Chung*, 87121, 53166, 110600 and *JDK 2000, Inc.*, 89002080010, be redetermined with adjustments.

The Board recessed at 11:40 a.m. and reconvened at 1:45p.m. with Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel present.

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BUSINESS TAXES APPEALS HEARINGS**Judco Manufacturing, Inc., 28491**

4-1-95 to 3-31-98, \$5,641.55 Tax

\$00.00 Penalty, Negligence

For Petitioner: Glenn R. Abel, Attorney
Thomas E. Buttner

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether sufficient evidence was provided to show that certain transactions were not actual purchases of tooling but, instead, erroneous journal entries charged to petitioner's Research and Development account.

Action: Upon motion of Mr. Klehs, seconded by Mr. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

Naresh C. Shah and Jayana N. Shah, 105724

4-1-96 to 12-31-99, \$7,199.75 Tax

For Petitioner: Naresh Shah

For Sales and Use Tax Department: Trecia Nienow, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether petitioners are liable for sales tax on sales in which the California purchasers agreed to pay tax to the California Department of Motor Vehicles.

Whether petitioners are liable for sales tax on sales to out-of-state purchasers who later removed the vehicles from California.

Whether petitioners are entitled to relief under Section 6596 based on erroneous oral advice.

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

A 1 Printing & Graphics Inc., 47968

10-1-95 to 9-30-98, \$101,900.44 Tax

\$10,199.96 Penalty, Negligence

For Petitioner: No Appearance

For Sales and Use Tax Department: Richard Goodrich, Hearing Representative

Action: The Board took no action.

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Vasant Kale, 89002204350

10-1-94 to 12-31-97, \$25,304.64 Tax

\$00.00 Penalty, Negligence

For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Action: The Board took no action.

Joseph James Byron, III, 53478

1-1-91 to 6-30-98, \$63,644.63 Tax

\$00.00 Penalty, Negligence

\$00.00 Penalty, Failure to File

\$00.00 Penalty, Finality

For Petitioner: Joseph Byron

For Sales and Use Tax Department: David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the evidence warrants an adjustment to the audited taxable sales.

Whether taxpayer's allegation that the tax laws regarding the taxation of photocopies of medical records are ambiguous, unclear, and not easily understandable, warrants a reduction in the tax.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the disputed measure of tax be reduced by 25 percent.

Javier Barajas, 91752

7-1-97 to 3-31-00, \$00.00 Tax

\$00.00 Penalty, Negligence

For Petitioner: German A. Gonzalez, Bookkeeper

Javier Barajas

Silvia Barajas

For Sales and Use Tax Department: David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: None identified.

Action: Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board directed staff to give petitioner a very liberal payment plan.

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Dri-Kleen, Inc., 29299

1-1-95 to 12-31-97, \$66,593.41 Tax

For Petitioner: No Appearance

For Sales and Use Tax Department: David H. Levine, Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether taxpayer is entitled to relief under Revenue and Taxation Code section 6596.

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Section.

Agop Karapetian, 89002251190

7-1-95 to 6-30-98, \$17,255.51 Tax

\$00.00 Penalty, Negligence

For Petitioner: No Appearance

For Sales and Use Tax Department: Richard Goodrich, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the evidence shows the 11.55 percent markup upon which the audited gasoline sales were based is excessive.

Whether the evidence shows that audited total sales are excessive.

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

FINAL ACTION ON PETITIONS HEARD MARCH 14, 2002

Mr. Klehs moved that the petition of *Judco Manufacturing, Inc., 28491*, be redetermined as recommended by the Appeals Section. The motion failed for lack of a second.

Mr. Parrish moved to grant the petition as to the disputed measure of tax. The motion was seconded by Mr. Klehs but failed to carry, Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no, Mr. Andal absent.

Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Andal absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Upon motion of Mr. Parrish, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition of *Nareh C. Shah and Jayana N. Shah, 105724*, be redetermined with adjustments.

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The Board adjourned at 2:30 p.m.

The foregoing minutes are adopted by the Board on May 30, 2002.